

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

GREGORY A. KOESTERING,

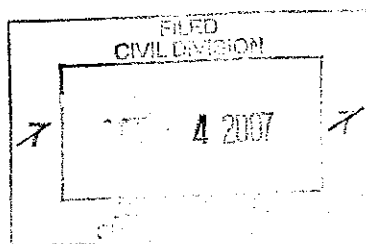
Petitioner,

Case No: 06-CV-011364

v.

THE BOARD OF FIRE AND POLICE  
COMMISSIONERS FOR THE CITY  
OF MILWAUKEE,

Respondent.



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**DECISION AND ORDER**

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This is an appeal by Gregory A. Koesterling ("Koesterling") from a decision of the Board of Fire and Police Commissioners of the City of Milwaukee ("Board") upholding the discipline of dismissal imposed on him by Police Chief Nanette Hegerty. The Board issued its decision on November 2, 2006.

In his brief on appeal, Koesterling argues that the Board failed to follow the applicable law, that it lacked jurisdiction, or that it failed in applying his due process or other constitutional rights. In particular as to the latter, Koesterling argues that he was denied the right to view a public record - a police booking-room videotape - and present evidence contained on the videotape to the Board. He asserts that he was denied his opportunity to be heard through a longer version of an edited version of the videotape presented at the hearing because the sound did not work on the Board's audio-visual equipment. Thus, even the edited booking-room videotape was not simultaneously seen and heard by the Board as part of Koesterling's presentation of evidence.

## FACTUAL BACKGROUND

This matter arises out of the imposition of discipline on Koesterling in personnel order 2005-155 based on violations of Department rules, including of Rule 4, Section 2/015.00 (failure to abide by the criminal laws of the State of Wisconsin), and Rule 4, Section 2/455.00 (mistreatment of a prisoner by using profane language and unnecessarily striking him). The incident at issue involved Officer Koesterling entering a police paddy wagon and allegedly repeatedly striking and verbally abusing a handcuffed suspect.

Koesterling evidence was that on the day in question, he and his partner, Officer Perez ("Perez"), went to the Ramon home regarding a domestic violence complaint. When they reached the home, the two officers rang the doorbell a number of times, but ultimately gained entry to the premises by jimmying the door. After entering the home they proceeded up to the second floor of the two-story duplex. There they encountered Mr. Ramon ("Ramon") and his wife, both of whom had injuries allegedly sustained in the domestic violence altercation. Perez determined that Ramon should be taken into custody. Koesterling began placing Ramon in handcuffs; Perez simultaneously turned away to get the statement of Ramon's wife. Ramon then fled down the stairs after one wrist was cuffed with Koesterling holding the other cuff. Ramon dragged Koesterling down several stairs before Koesterling lost grip of the cuffs and ultimately lost track of Ramon. Ramon was subsequently caught and placed into custody by other officers. After Ramon had been placed into custody Koesterling was called to make an identification of the suspect. He was unable to make a positive identification by looking at Ramon's face because he had seen Ramon for only a few seconds during the incident. His ability to make an identification hinged on seeing the cuffs Ramon was wearing because his name and an identification number were written on the cuffs. Koesterling entered the paddy wagon at which time the suspect

became combative, kicking him in the leg. Koesterling delivered two focused knee strikes to the suspect's chest or torso for the purposes of subduing him in order to get a positive identification. Koesterling also cursed at the suspect and told him to stop resisting. Once he was able to inspect the cuffs and make a positive identification, Koesterling left the wagon and had a conversation with Sergeant Holmes during which he said, "Sorry Sarge, he got what he deserved."

The contrary evidence differs from Koesterling's evidence in only two main respects: first, that Koesterling struck Ramon multiple times with no reason for doing so; second, that Koesterling admitted as much to his partner Perez as well as Sergeant Holmes.

Chief Hegerty ultimately decided dismissal was the only punishment commensurate with Koesterling's alleged misdeeds. The hearing before the Board on her discipline decision began at 1:00 PM and ended at approximately 9:20 PM the same day. Koesterling attempted to show a portion of the aforementioned booking-room video during the hearing. However, no audio could be heard. *Hearing Transcript*, pp. 225-26.

Koesterling asserts that he should not be dismissed for acting as he did. Essentially, he says his only wrongful act was cursing at a prisoner in violation of Rule 4, Section 2/455.00. For this abusive language, Koesterling argues the Department should have handed down discipline less harsh than dismissal.

### **DISCUSSION**

The Court has viewed the videotape in question. The outcome of this case turns on credibility, and the videotape offers evidence to undermine Ramon's credibility. The Court is deeply concerned that Koesterling's due process right to admit such audio-visual evidence was thwarted by the Board's faulty equipment. Koesterling had a due process right to have the Board both see and simultaneously hear the booking-room videotape. Given the Board's equipment

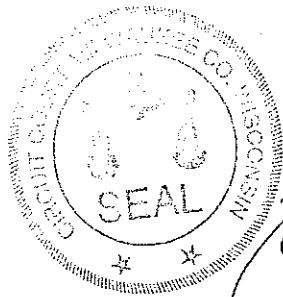
failure, the Board should have adjourned the hearing until the equipment was in proper working order or attempted to procure working audio-visual equipment. The Court concludes that Koesterling was deprived of both his due process right to fully present his evidence and his due process right to a full and fair hearing. Although perhaps not outcome determinative, the Court also notes with concern that this hearing took place over the course of more than eight hours, over half of which were evening hours.

### ORDER

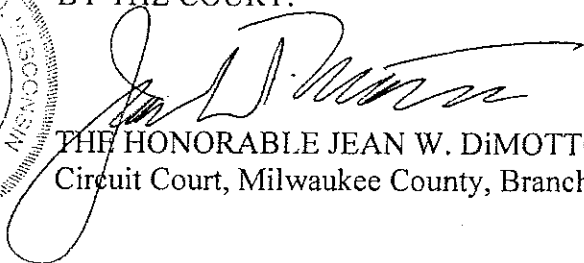
THEREFORE, IT IS HEREBY ORDERED:

1. The decision of The Board of Fire and Police Commissioners for the City of Milwaukee is REVERSED AND REMANDED for proceedings consistent with this opinion;
2. Koesterling shall prepare a transcript of the booking-room videotape from at least 23:13:00 to 23:23:00 for use in the remand proceedings.

Dated at Milwaukee, Wisconsin this 4<sup>th</sup> day of October, 2007.



BY THE COURT:

  
THE HONORABLE JEAN W. DiMOTTO  
Circuit Court, Milwaukee County, Branch 7